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FEB 09 2011  
BY JEANNE HICKS, Clerk  
Deputy

1 BRAD D. BRIAN (CA Bar No. 079001, *pro hac vice*)  
Brad.Brian@mto.com  
2 LUIS LI (CA Bar No. 156081, *pro hac vice*)  
Luis.Li@mto.com  
3 TRUC T. DO (CA Bar No. 191845, *pro hac vice*)  
Truc.Do@mto.com  
4 MIRIAM L. SEIFTER (CA Bar No. 269589, *pro hac vice*)  
Miriam.Seifter@mto.com  
5 MUNGER, TOLLES & OLSON LLP  
355 South Grand Avenue, Thirty-Fifth Floor  
6 Los Angeles, CA 90071-1560  
Telephone: (213) 683-9100

7 THOMAS K. KELLY (AZ Bar No. 012025)  
8 tskelly@kellydefense.com  
425 E. Gurley  
9 Prescott, Arizona 86301  
Telephone: (928) 445-5484

10 Attorneys for Defendant JAMES ARTHUR RAY

11  
12 SUPERIOR COURT OF STATE OF ARIZONA  
13 COUNTY OF YAVAPAI

14 STATE OF ARIZONA,

15 Plaintiff,

16 vs.

16 JAMES ARTHUR RAY,

17 Defendant.

CASE NO. V1300CR201080049

Hon. Warren Darrow

DIVISION PTB

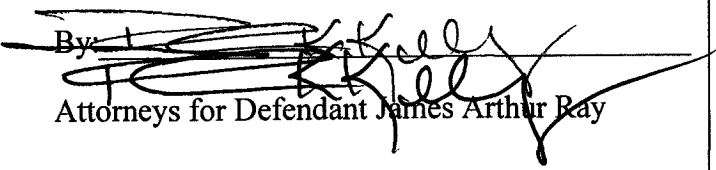
**NOTICE OF FILING OF ORIGINAL  
NOTARIZED AFFIDAVIT OF DR.  
NORMA J. SILVERSTEIN IN SUPPORT  
OF DEFENDANT JAMES ARTHUR  
RAY'S RENEWED MOTION TO  
CHANGE PLACE OF TRIAL**

21 Defendant James Arthur Ray, by and through undersigned counsel, hereby submits the  
22 original notarized affidavit of Dr. Norma J. Silverstein in support of his Renewed Motion to  
23 Change Place of Trial, filed February 1, 2011. A copy of the affidavit was filed on February 7,  
24 2011.  
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1  
2 DATED: February 9, 2011

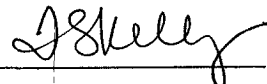
MUNGER, TOLLES & OLSON LLP  
BRAD D. BRIAN  
LUIS LI  
TRUC T. DO  
MIRIAM L. SEIFTER

5 THOMAS K. KELLY

6  
7 By:   
8 Attorneys for Defendant James Arthur Ray

9 Copy of the foregoing delivered this 9th day  
10 of February, 2011, to:

11 Sheila Polk  
12 Yavapai County Attorney  
13 Prescott, Arizona 86301

14 by   
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AFFIDAVIT OF DR. NORMA J. SILVERSTEIN IN SUPPORT OF  
DEFENDANT'S MOTION FOR CHANGE OF VENUE.  
FEBRUARY 4, 2011

Dr. Norma J. Silverstein, if duly sworn and called to testify, says as follows:

1. I am Senior Vice President of Research and Development at Vinson & Company. Vinson & Company is a Los Angeles, California firm engaged in the business of understanding human behavior and the social and psychological processes involved in a jury trial. On January 28, 2011, Vinson & Company was asked by the law firm of Munger, Tolles & Olsen LLP to conduct a venue study. Vinson & Company is providing its services to the Defendant, James Arthur Ray, in this case on a *pro bono* basis.

2. Under my direction, Vinson & Company conducted a statistical survey in Maricopa County, Arizona commencing on February 1, 2011 and ending on February 3, 2011. The survey was designed to measure public opinion in Maricopa County concerning the defendant as it compares to opinions expressed on court mandated jury questionnaires from the venire in Yavapai County, Arizona.

3. In the following paragraphs, I shall do the following: (A) describe my experience and qualifications for conducting and interpreting the results of this survey; (B) discuss the method by which the survey was conducted; (C) discuss the topics covered in the survey and the findings; (D) discuss why an inherent juror bias among potential jurors mandates transfer of the case out of Yavapai County.

A. Experience and qualifications of Dr. Norma J. Silverstein.

4. I hold a Bachelor of Arts degree from the University of Missouri (1971). I have completed coursework for two Master of Arts Degrees in psychology and social psychology from California State University, Long Beach, CA (1974 & 1989), a Ph.D. (A.B.D.) from the University of Southern California (1978) and a Psy.D., Doctor of Psychology Degree, from California Coast University in Santa Ana, CA (2001).

5. I have conducted several extensive studies which were designed to understand potential juror bias in cases with extensive media coverage in various venues. Two national venue studies I have been involved with are: *United States of America v.*

*Timothy McVeigh* and *United States v. Terry Lynn Nichols* (1995). These two cases involved the bombing of the Alfred P. Murrah Building in Oklahoma City. In both cases, I worked with the prosecution team representing the United States of America. I have also been involved with a multi-state venue study regarding the Orange County, California bankruptcy litigation: *People of the State of California v. Robert Lafée Citron* (1994). I have also conducted a venue study for a high-profile criminal matter in Chicago, Illinois in 1996: *The People of the State of Illinois v. Dennis Kurzawa, Thomas Vosburgh, Robert Winkler, James Montesano, Thomas Knight, Patrick King and Robert Kilander*. I have also conducted a venue study in Ventura County, CA for *Rio School District v. Siemens Building Technologies* (2006). I have assisted the Principals at Vinson & Company with a venue study in Montana: *USA v. W.R. Grace, et al.* (2005). Finally, our Vinson & Company Chairman, Dr. Donald E. Vinson, conducted a venue study for the matter involving the Washington Public Power Supply system Securities Litigation in the Western District of Washington (1984).

#### B. Survey Methodology.

6. Commencing on February 1, 2011, Vinson & Company undertook a survey of jury qualified individuals who reside in Maricopa County, Arizona. The criteria for determining juror qualifications are discussed in further detail below. The sample consisted of 400 individuals who were interviewed by telephone.

7. The survey questionnaire was designed to mirror key bias questions that appear on the Yavapai County court's jury questionnaire thus enabling a one-to-one comparison of interviewee's attitudes in both venues. Care was taken that the questions not be loaded so as to "lead" respondents into providing a particular answer. On all questions, care was taken to ask the questions without suggesting to the respondents any potential answers. The interviews averaged less than 5 minutes and asked between 5 and 7 questions depending upon whether the interviewee said he/she had heard/read/seen any media coverage of the case and/or defendant.

8. Trained interviewers who are experienced in survey methodology conducted the interviews using Computer Aided Technology, Inc. ("CATI") computerized software. The CATI software allows the entire survey to be programmed into a computer and the interviewer and interviewee are guided through the survey via the software, eliminating potential mistakes or inconsistencies in wording and skip patterns. Respondents' answers are immediately entered into the computer as they are verbalized. Appropriate follow-up questions were asked for clarification when indicated by the survey structure.

9. All telephone dialing was conducted using Random Digit Dialing procedures. Random Digit Dialing is the method of choice for sampling randomly, via the telephone, from a population of residents. It assures that individuals who have listed phone numbers as well as those with unlisted numbers are called equally because the phone numbers are generated randomly based upon data "banks" of prefixes assigned to each geographic region in the country.

10. Upon contact, each respondent was screened to determine whether they would be eligible for jury service in Maricopa County. This was accomplished by asking several initial screening questions at the beginning of the survey relating to age and voter residency in addition to whether the respondent possessed an Arizona driver's license or identification card. An individual is eligible for jury service in Maricopa County if they are at least 18 years of age and qualify through one of the following: 1) either a registered voter in Maricopa County (88% of the sample were registered voters in the sample) or 2) residency in Maricopa County and possession of either a valid driver's license or identification card. Respondents were not interviewed if it was apparent they did not speak English well enough to understand and participate in the survey. At the completion of the survey, each respondent's phone number was verified and entered into the computer.

11. The sample size of 400 individuals was selected to ensure that the results would accurately reflect the opinions of potential jurors residing in Maricopa County. The sample size of 400 from the Maricopa County population has a sampling error of plus or minus 5% at the 95% confidence level. This means that if we were to sample every jury-eligible individual in Maricopa County, there is one chance in 20 that the results would vary from the findings of this poll by more than plus or minus 5%.

C. Topics covered in the survey and principal findings.

12. The questions covered in the survey and the principal findings are summarized below. A copy of the survey instrument and instructions to the interviewers is attached as Exhibit A. The survey results in data form and percentages are set forth in full and attached as Exhibit B.

1. Significantly less exposure to media coverage in Maricopa County and almost universal exposure in Yavapai County.

13. A summary of 238 jury questionnaires from Yavapai County indicated 94% of the venire had heard/read/or seen coverage of the case in the media. Among Maricopa County respondents, 72% indicated exposure. The difference between the two venues was statistically significant at the  $p < .000$  level, using the Chi Square Test.<sup>1</sup>

14. Upon follow-up, 36.2% of those who had heard about this case in Yavapai County indicated that the media exposure to this case "would" interfere with their ability to be fair and impartial, compared to 27.1 % in Maricopa County. The difference between the two venues was statistically significant at the  $p < .000$  level.

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<sup>1</sup> This means that the difference found between the percentages on the questions from the Maricopa survey and the Yavapai jury questionnaires is significantly different at a level that is not due to chance, but due to real differences between the two venues. Ordinarily, a significance of  $p < .05$  is considered to be a reliable difference, and a difference that reaches significance of  $p < .01$  is considered to be a highly reliable difference. In this case, the significance of  $p < .000$  is extremely highly reliable.

15. Thus, 34.9% (83/238) of the total venire in Yavapai County indicated a bias based upon media exposure compared to 19.5% (78/400) of the total sample in Maricopa County.

2. An additional 8% in Yavapai County indicated that the nature of this case alone could prevent them from being fair and impartial.

16. Media exposure is one concerning source of bias but a percentage in each venue indicated that while media exposure would not be an issue for them, the nature of the case or what they believe they knew about this case could in-and-of itself cause bias, and that percentage was higher in Yavapai County. In Yavapai County, 8% of the total venire (19/238) indicated that while they had been exposed to media coverage and the media coverage would not be a factor in their ability to be fair and impartial, the nature of the case could be. The percentage in Maricopa County was 3%.

3. Almost twice as many Yavapai veniremen indicate bias.

17. As summarized in Exhibit C, the total percentage of individuals indicating inability to be fair and impartial is 42.9% of the venire in Yavapai County. These are persons who expressed some bias on their jury questionnaires either due to the nature of the case alone or due to media bias alone or both. The percentage for Maricopa County was 22.5%.

D. There is an inherent juror bias in Yavapai County which precludes empanelling a fair and impartial jury.

4. Almost universal prejudicial media exposure in Yavapai County.

18. The most concerning finding from this survey is the significantly greater media exposure in Yavapai County. A list of comments made on the Yavapai jury questionnaire is attached as Exhibit D. Furthermore, an examination of the jury questionnaires reveals an overwhelming bias against the defendant based upon that media coverage. This is evident in a summary of the comments found on the jury questionnaires from Yavapai regarding an inability to be fair and impartial based upon media exposure (see Exhibit E).

19. Of those who indicated a bias based upon the media, 70% mentioned a clear and unmistakable bias against the defendant. Most of the remainder were not as clear cut (e.g., "couldn't be fair based upon what I've heard" and "Lots of information out there, hard to ignore."). Typical comments, which are clearly prejudicial, dominate the responses on the jury questionnaire and refer to the "facts" they've seen that lead them to believe the defendant is guilty, such as:

**"This coverage convinced me that Mr. Ray is a con artist who has garnered a fortune by duping people. I believe his greed and inflated ego caused him to ignore the well-being of those who trusted him, and that led to the tragic deaths of three people. I would find it virtually impossible to be impartial as a juror in this case.**

**"As stated on page 5, I have already formed an opinion of guilt toward Mr. Ray based on all of the coverage I have seen or read about this case."**

**"There is no question that I could be unable to be a fair and impartial juror"; "this was a money-making hoax/scam in all regards."**

**"At that time of the incident, I felt he was guilty, and I still feel that way of his doings."**

**"Seems simple to me I don't know why this is even going to court. I feel like James Arthur Ray is guilty based on what I know."**

**"I believe he is guilty and should be punished to the fullest extent of the law, including the death penalty."**

**"News was not in his favor."**

**"I have become biased to view Mr. Ray as a money hungry fraud. A cult leader who preyed on others and pushed them too far."**

**"The media showed that Mr. Ray was in charge and as such, was the responsible party for anything that happened. As such he is the guilty party for anything that happened."**

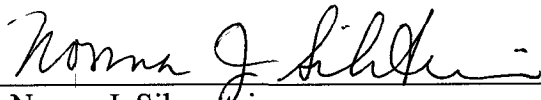
20. This disturbing prejudicial and widespread coverage by the local media strongly suggest there will be significant obstacles for obtaining an untainted, fair and impartial jury in Yavapai County in this case.

21. Maricopa County has a larger population than Yavapai County. Only 6% of Yavapai County venire have not heard about this case. That represents a very small number of individuals from which to seat a jury. This is contrasted with 28% who haven't heard about the case in Maricopa County which represents a much larger number from which to draw a jury pool.

22. The level of vitriol expressed by potential jurors in Yavapai County is at a level that I have not seen in prior cases. Emotionally laden descriptions of the defendant go far beyond simply leaning towards believing him to be guilty. Potential jurors not only describe what they believe to be "factual" events in this

tragedy, but attributions about the defendant's character ("a fraud"), motivations ("money hungry") and even views of appropriate punishment ("death penalty").

23. In my professional opinion, based upon the data in this case and my experience in other cases involving extensive media coverage of the events, I do not believe Mr. Ray can seat a fair and impartial jury in Yavapai County. The data demonstrates that Maricopa County is a fairer venue.



Dr. Norma J. Silverstein  
Gainesville, Florida  
February 7, 2011

